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Paul Montwillo

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UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an individual:) Case No. C 07 3947 SI
Plaintiff,)
vs.) **PLAINTIFF/CROSS-DEFENDANT PAUL
MONTWILLO'S MOTION IN LIMINE #5
TO PRECLUDE EVIDENCE RELATING
TO THE OWNERSHIP OF THE
COPYRIGHTS**
WILLIAM TULL, an individual; DANIEL)
GIBBY, and individual; GIBBY)
NOVELTIES, LLC dba ARSENIC & APPLE) Date: June 26, 2008
PIE, a California limited liability company:) Time: 10:00 a.m.
and DOES 1-100, inclusive.) Court: 10, 19th Floor
Defendants.) Judge: Honorable Susan Illston
WILLIAM TULL, an individual;)
Counter-Claimant,) Complaint Filed: August 1, 2007
vs.) Counterclaim Filed: January 11, 2008
PAUL MONTWILLO, an individual, and) Trial Date: June 30, 2008
DOES 21 through 30, inclusive.)
Counter-Defendants)
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INTRODUCTION

Plaintiff moves this Court to preclude the defendants in this case from raising cumulative and irrelevant evidence at trial in light of the Court's Order Denying Cross-Motions for

1 Summary Judgment. Only one issue of fact remains to be decided at trial: whether plaintiff Mr.
2 Montwillo gave a non-exclusive implied license to Arsenic and Apple Pie, L.L.C. or his business
3 partner, William Tull. Thus, any evidence attempting to dispute the ownership by Mr.
4 Montwillo of the copyrights protecting the dolls in question is irrelevant and prejudicial.

5 **STATEMENT OF FACTS**

6 Mr. Montwillo created the dolls in question through his own creativity and ingenuity
7 beginning in the mid 1990's. In July of 2002, Mr. Montwillo sought to protect his interest in
8 these designs by registering copyrights with the Copyright Office. The petitions and final
9 granting of copyrights over the subject dolls have been shared with the defendants through the
10 discovery process.

11 The Honorable Judge Illston's Order denying Cross-Motions for Summary Judgment
12 explicitly determined several issues of law and fact that should be prevented from being raised in
13 trial. In the Order, Judge Illston clearly determined that Mr. Montwillo is the current possessor
14 of the copyrights to the subject dolls. Therefore, this question is not part of the final fact at issue
15 to be determined at trial according to the Order.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **The Fact that Plaintiff Is the Rightful Owner of the Copyrights Has Been
18 Established in Judge Illston's Order and Should Be Precluded From Trial,
19 Pursuant to the Federal Rules of Civil Procedure 56(d)(1) and the Federal Rules of
Evidence 401 and 402.**

20 The Federal Rules of Civil Procedure (hereinafter referred to as "FRCP") section 56(d)(1)
21 provides that facts stated in an order denying summary judgment are treated as established. The
22 Federal Rules of Evidence section 402 precludes the admission of evidence that is irrelevant.
23 Relevant evidence is that which has a tendency to make the existence of any fact that is of
24 consequence to the determination of the action more probable or less probable than it would be
25 without the evidence. Fed. R. Evid. 401.

26 The existence of the copyright license held by Mr. Montwillo has been acknowledged by
27 the Court in its Order. The Court refers to the dolls as "Plaintiff's dolls and doll designs" and

1 again when it says that there are "issues of fact regarding whether plaintiff granted an implied
2 nonexclusive license." (Order Denying Cross-Motions for Summary Judgment, 9:18, 10:4).
3 Only by possessing a copyright can one grant an implied nonexclusive license, and therefore the
4 Court should take judicial notice of the fact that Mr. Montwillo does possess valid copyrights on
5 the dolls and designs in question and instruct the jury as such. *Konigsberg Int'l Inc. v. Rice*, 16
6 F.3d 355 (9th Cir. 1994).

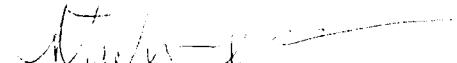
7 As argued in Plaintiff's motion for summary judgment, the Copyright Act of 1976
8 provides that copyright ownership "vests initially in the author or authors of the work. 17 U.S.C.
9 § 201(a). As a general rule, the author is the party who actually creates the work, that is, the
10 person who translates an idea into a fixed, tangible expression entitled to copyright protection. §
11 102." *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 737, 109 S.Ct. 2166, 104
12 L.Ed.2d 811 (1989) ("CCNV v. Reid"). Under the Copyright Act, there are only three methods by
13 which the original author is not the copyright owner: (1) by conveyance in a written instrument
14 (17 U.S.C. § 204(a)); (2) by creation as a "work made for hire" (17 U.S.C. § 201(b)); and (3) by
15 operation of law (17 U.S.C. § 204(a)).

16 The Court has held: (1) the Arsenic and Apple Pie, LLC operating agreement and the
17 precursor partnership agreement does not contain an assignment of copyright; (2) that Montwillo
18 was never an employee, thus the work for hire doctrine does not apply; and (3) that the
19 Copyrights were not transferred by any operation of law. Thus, the jury should be instructed that
20 that the Court has found as a matter of law, that Mr. Montwillo is the valid owner of the
21 Copyrights. Further, defendants should be excluded from presenting any evidence or argument
22 that anyone besides Mr. Montwillo is the exclusive owner of the copyrights.

23 An argument raised by defendants in their Motion for Summary Judgment was that Mr.
24 Montwillo assigned his interest in the dolls to the corporation in exchange for his share of the
25 profits, thereby losing all rights to the copyrights. This contention is not at issue in light of the
26 Order. The only question remaining is whether Mr. Montwillo granted an implied nonexclusive
27 license to Arsenic and Apple Pie, LLC, or to William Tull.

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3 Dated: 10th of June, 2008
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